

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE JUNE 4, 2003

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 923

Introduced by Senator Sher

February 21, 2003

An act to amend Sections 13261, 13265, and 13269 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Sher. Water quality.

(1) The Porter-Cologne Water Quality Control Act provides that any person failing to furnish a report or pay a fee, or discharging waste in violation of certain waste discharge requirements, after that person has been requested to furnish a report or pay a fee or notified in writing by a California regional water quality control board about that violation, *as applicable*, is guilty of a misdemeanor.

This bill would delete the request and notification requirements. By expanding the scope of a crime, this bill would impose a state-mandated local program. *The bill would require the regional board or the superior court to consider certain factors in determining the amount of civil liability.*

(2) The act provides that a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is not against the public interest. The act provides that the waivers are subject to conditions.

This bill, instead, would provide that the state board or a regional board may waive those waste discharge requirements if certain requirements are met. The bill would require the conditions of the waivers to include the payment of an annual fee and the performance of *individual, group, or watershed-based* monitoring duties. The bill would require the funds generated by the payment of the fee to be deposited in the Water Discharge Permit Fund for expenditure, upon appropriation, by the *state board or the* appropriate regional board to ~~pay for the costs of administering the waiver~~ *carry out the act. The bill would require the regional board to provide notice regarding the adoption of a waiver.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13261 of the Water Code is amended to
2 read:

3 13261. (a) Any person failing to furnish a report or pay a fee
4 under Section 13260 is guilty of a misdemeanor and may be liable
5 civilly in accordance with subdivision (b). *A complaint alleging*
6 *the act or failure to act that constitutes the violation shall be*
7 *prepared and served, and a hearing conducted on the complaint,*
8 *in accordance with subdivisions (a) and (b) of Section 13323.*

9 (b) (1) Civil liability may be administratively imposed by a
10 regional board or the state board in accordance with Article 2.5
11 (commencing with Section 13323) of Chapter 5 for a violation of
12 subdivision (a) in an amount that may not exceed one thousand
13 dollars (\$1,000) for each day in which the violation occurs. *In*
14 *determining the amount of civil liability, the regional board shall*
15 *consider the factors described in Section 13327.* For purposes of
16 this section only, the state board shall have the same authority and
17 shall follow the same procedures as set forth in Article 2.5
18 (commencing with Section 13323) of Chapter 5, except that the



executive director shall issue the complaint with review by the state board. Civil liability may not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs. *In determining the amount of civil liability, the superior court shall consider the factors described in Section 13351.*

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of that requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor. This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed twenty-five thousand dollars (\$25,000).

SEC. 2. Section 13265 of the Water Code is amended to read:

13265. (a) Any person discharging waste in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense. *A complaint alleging the act or failure to act that constitutes the violation shall be prepared and served, and a hearing conducted on the complaint, in accordance with subdivisions (a) and (b) of Section 13323.*

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with

1 Section 13323) of Chapter 5 for a violation of subdivision (a) in
2 an amount which shall not exceed one thousand dollars (\$1,000)
3 for each day in which the violation occurs. *In determining the*
4 *amount of civil liability, the regional board shall consider the*
5 *factors described in Section 13327.*

6 (2) Civil liability may be imposed by the superior court in
7 accordance with Article 5 (commencing with Section 13350) and
8 Article 6 (commencing with Section 13360) of Chapter 5 for a
9 violation of subdivision (a) in an amount which shall not exceed
10 five thousand dollars (\$5,000) for each day in which the violation
11 occurs. *In determining the amount of civil liability, the superior*
12 *court shall consider the factors described in Section 13351.*

13 (c) (1) Any person discharging hazardous waste, as defined in
14 Section 25117 of the Health and Safety Code, in violation of
15 Section 13264 is guilty of a misdemeanor and may be liable civilly
16 in accordance with subdivision (d). That liability shall not be
17 imposed if the discharger is not negligent and immediately files a
18 report of the discharge with the board, or if the regional board
19 determines that the violation of Section 13264 was insubstantial.

20 (2) This subdivision does not apply to any waste discharge that
21 is subject to Chapter 5.5 (commencing with Section 13370).

22 (d) (1) Civil liability may be administratively imposed by a
23 regional board in accordance with Article 2.5 (commencing with
24 Section 13323) of Chapter 5 for a violation of subdivision (c) in
25 an amount which shall not exceed five thousand dollars (\$5,000)
26 for each day in which the violation occurs.

27 (2) Civil liability may be imposed by the superior court in
28 accordance with Article 5 (commencing with Section 13350) and
29 Article 6 (commencing with Section 13360) of Chapter 5 for a
30 violation of subdivision (c) in an amount which shall not exceed
31 twenty-five thousand dollars (\$25,000) for each day in which the
32 violation occurs.

33 SEC. 3. Section 13269 of the Water Code is amended to read:

34 13269. (a) (1) On and after January 1, 2000, the provisions
35 of subdivisions (a) and (c) of Section 13260, subdivision (a) of
36 Section 13263, or subdivision (a) of Section 13264 may be waived
37 by the state board or a regional board as to a specific discharge or
38 ~~a specific type of discharge if the state board or a regional board~~
39 ~~determines that the waiver is consistent with any applicable state~~
40 ~~or regional water quality control plan and is in the public interest.~~

~~(2) Waivers for specific types of discharges may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but are not limited to, both of the following:~~

~~(A) The payment of an annual fee established by the appropriate regional board. Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the appropriate regional board to pay for the costs of administering the waiver.~~

~~(B) (i) The performance of monitoring on a quarterly basis for at least one year to verify the constituents of the discharge and the adequacy of the waiver's conditions, and, thereafter, the performance of that monitoring at least once every two years.~~

~~(ii) Notwithstanding clause (i), for discharges of limited duration or for discharges that do not occur on average more than twice in a 12-month period, the state board or a regional board may require alternative monitoring in lieu of the monitoring described in clause (i), as appropriate. *a specific type of discharge, after a public hearing, if the state board or a regional board determines that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.*~~

~~(2) A waiver for a specific types of discharge may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but are not limited to, both of the following:~~

~~(A) The payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260. Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board solely for the purposes of carrying out this division.~~

~~(i) In establishing the amount of a fee that may be imposed on any irrigated agriculture operation pursuant to this section, the~~

1 state board shall consider all of the following factors: the size of
2 the operations, the type and amount of discharges involved, the
3 pricing mechanism of the commodities produced, any compliance
4 costs borne by the operations pursuant to state and federal water
5 quality regulations, any costs associated with water quality
6 monitoring performed by the operation, and participation in a
7 watershed management program approved by the applicable
8 regional board.

9 (ii) In establishing the amount of a fee that may be imposed on
10 silviculture operations pursuant to this section, the state board
11 shall consider all of the following factors: the size of the operation,
12 the type and amount of discharges involved, the pricing
13 mechanism of the commodities produced, any compliance costs
14 borne by the operations pursuant to state and federal regulations,
15 any costs associated with water quality monitoring performed by
16 the operation, and the average annual number of timber harvest
17 plans proposed by the operation.

18 (iii) If the state board or a regional board determines that the
19 discharge will not affect, or have the potential to affect, the quality
20 of the waters of the state, all or part of the annual fee shall be
21 refunded.

22 (iv) The total amount of annual fees collected pursuant to this
23 section shall equal an amount not greater than the amount
24 necessary to recover costs incurred in connection with the
25 issuance, administration, reviewing, monitoring, and enforcement
26 of waivers of waste discharge requirements.

27 (B) The performance of individual, group, or watershed-based
28 monitoring, as required by the regional board, of all discharges
29 other than those discharges that will not affect, or have the
30 potential to affect, the quality of the waters of the state. The
31 monitoring requirements, at a minimum, shall be designed to verify
32 the constituents of the discharge and the adequacy and
33 effectiveness of the waiver's conditions. In establishing individual
34 or group monitoring requirements, the regional board may
35 consider the volume, duration, frequency, and constituents of the
36 discharge; the extent and type of existing monitoring activities,
37 including existing watershed-based compliance and effectiveness
38 monitoring efforts; and the size of the project area. Monitoring
39 results shall be made available to the public.



(3) *The regional board shall give notice of the adoption of a waiver and its conditions by publication within the affected county or counties pursuant to Section 6061 of the Government Code. In addition to publication, the regional board shall give notice of the adoption of a waiver and its conditions by mail to the persons making or proposing the discharge, or changes to the discharge, if those persons have provided to the regional board a name and mailing address to which the notice may be sent. If available, the regional board shall make use of mailing addresses in other databases, such as those databases managed by the Department of Pesticide Regulation, the county assessor's office, county agricultural commissioners, or the local water districts, to provide notice to those persons.*

(b) (1) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(2) Notwithstanding paragraph (1), a waiver for an onsite sewage treatment system that is in effect on January 1, 2002, shall remain valid until June 30, 2004, unless the regional board terminates the waiver prior to that date. Any waiver for onsite sewage treatment systems adopted or renewed after June 30, 2004, shall be consistent with the applicable regulations or standards for onsite sewage treatment systems adopted or retained in accordance with Section 13291.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 do not apply to a discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

1 (2) Emergency projects undertaken, carried out, or approved
2 by a public agency to maintain, repair, or restore an existing
3 highway, as defined in Section 360 of the Vehicle Code, except for
4 a highway designated as an official state scenic highway pursuant
5 to Section 262 of the Streets and Highways Code, within the
6 existing right-of-way of the highway, damaged as a result of fire,
7 flood, storm, earthquake, land subsidence, gradual earth
8 movement, or landslide within one year of the damage. This
9 paragraph does not exempt from this section any project
10 undertaken, carried out, or approved by a public agency to expand
11 or widen a highway damaged by fire, flood, storm, earthquake,
12 land subsidence, gradual earth movement, or landslide.

13 (d) Subdivision (c) is not a limitation of the authority of a
14 regional board under subdivision (a) to determine that any
15 provision of this division shall not be waived or to establish
16 conditions of a waiver. Subdivision (c) shall not apply to the extent
17 that it is inconsistent with any waiver or other order or prohibition
18 issued under this division.

19 (e) The regional boards and the state board shall require
20 compliance with the conditions pursuant to which waivers are
21 granted under this section.

22 (f) Prior to renewing any waiver for a specific type of discharge
23 established under this section, the state board or a regional board
24 shall review the terms of the waiver policy at a public hearing. At
25 the hearing, the state board or a regional board shall determine
26 whether the discharge for which the waiver policy was established
27 should be subject to general or individual waste discharge
28 requirements.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

